

Appl. No. 09/976,182
Amtd. Dated March 1, 2004
Reply to Office Action of December 4, 2003

• • R E M A R K S / A R G U M E N T S • •

The Official Action of December 4, 2003 has been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment, independent claim 1 has been changed to recite that heights of ones of the first and second elasticized zones that are adjacent to one another in the waist-encircling direction are substantially coextensive along the waist-encircling direction.

Support for this limitation can be readily found in 2 and is believed to more clearly describe the manner in which the elastic zones of applicants' invention are sequentially arranged in a transverse or waist-encircling direction, which is opposite to the manner in which the elastic zones 28a, 28b and 28c of Yamamoto et al. are sequentially arranged in a longitudinal direction.

Also by the present amendment, claims 5-8 have been canceled in favor of claims 1-4

Entry of the changes to the claims is respectfully requested.

Claims 1-4 are pending in this application.

Claims 1-3 and 5-7 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,749,865 to Yamamoto et al.

Claims 4 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Yamamoto et al.

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For the reasons set forth below it is submitted that each of pending claims 1-4 are allowable over the prior art and therefore, the outstanding rejections of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is respectfully requested.

The Examiner has relied upon Yamamoto as disclosing:

...a disposable pull-on undergarment, as shown in figure 1, comprising a liquid pervious topsheet 10, a liquid impervious backsheet 11, and a liquid absorbent core. The undergarment has front and rear waist-encircling regions 17 and 18, a crotch region 19, a waist opening 21, and a pair of leg openings 22. The front and rear waist-encircling regions 17 and 18 comprise a first elasticized zone 28a and a second elasticized zone 28b. The first and second elasticized zones 28a and 28b have heights that extend in the longitudinal direction of the undergarment. The heights of the first and second elasticized zones 28a and 28b both extend the length of the undergarment in the waist encircling direction, and are therefore substantially coextensive along the waist-encircling direction, as shown in figure 1. The tensile stress of the first elasticized zone 28a is greater than the second elasticized zone 28b, as disclosed in column 3, line 60 through column 4, line 15.

In the Official Action of May 5, 2003 in response to applicants' argument that the elasticized zones of Yamamoto et al. are adjacent to each other in the longitudinal direction of the undergarment but not adjacent to each other in the waist surrounding direction, the Examiner took the position that:

...it is noted that portions of each elasticized zone are adjacent to each other in both the longitudinal and waist-surrounding directions, as shown in figure 1.

In the Advisory Action of August 22, 2003 the Examiner stated that:

The first and second elasticized zones may be defined to have the same ends points along the longitudinal axis of the article, thus being adjacent each other in the waist encircling direction.

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The manner in which the Examiner has interpreted Yamamoto et al. so as to construe that the elasticized zones 28a and 28b are "adjacent to each other in the waist encircling direction" requires that the Examiner to arbitrary define the elasticized zones 28a and 28b "to have the same end points along the longitudinal axis of the article."

This limitation, and thus the Examiner's interpretation of Yamamoto et al., remains a limitation of applicants' claimed invention.

Accordingly, applicants' independent claim 1 requires, in part that:

- 1) The first and second elasticized zones are adjacent to one another in the waist-encircling direction; and
- 2) The heights of each of the first and second elasticized zones are substantially coextensive along the waist-encircling direction.

In order to read Yamamoto et al. on the second limitation listed above, the Examiner has taken the position that:

The heights of the first and second elasticized zones 28a and 28b both extend the length of the undergarment in the waist encircling direction, and are therefore substantially coextensive along the waist-encircling direction, as shown in figure 1.

It is noted that the Examiner's manner of interpreting Yamamoto et al. to read on the first and second limitations above is inconsistent. On one hand, in order to read on the first limitation, the Examiner arbitrary defines the elasticized zones 28a and 28b "to have the same end points along the longitudinal axis of the article." On the other hand, in order to read on the second limitation, the

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Examiner has states that the heights of the first and second elasticized zones 28a and 28b of Yamamoto et al. both extend the length of the undergarment in the waist encircling direction.

It would not seem like the Examiner can interpret a prior art reference in two exclusive ways in order to read on separate limitations of a claim. Either the elastic zones 28a and 28b of Yamamoto et al. "extend the heights of the first and second elasticized zones 28a and 28b both extend the length of the undergarment in the waist encircling direction" or are defined by arbitrary end points somewhere in between the side edges.

In order to more clearly define applicants' claimed invention, independent claim 1 has been amended herein to recite that heights of ones of the first and second elasticized zones that are adjacent to one another in the waist-encircling direction are substantially coextensive along the waist-encircling direction.

It is submitted that this addition limitation together with the two limitations listed above, completely prevent the Examiner from being able to rely upon Yamamoto et al. as anticipating or otherwise rendering obvious applicants' claimed invention.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §102 as anticipating applicants' claimed invention.

Moreover the Examiner cannot rely upon the prior art as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

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It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejections of the claims should hence be withdrawn.

Therefore, entry of the present amendment and reconsideration and withdrawal of the outstanding rejections of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

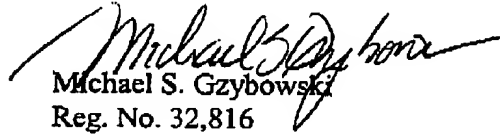
If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of

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time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


Michael S. Gzybowski
Reg. No. 32,816

BUTZEL LONG
350 South Main Street
Suite 300
Ann Arbor, Michigan 48104
(734) 995-3110

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